

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUTH CAMEL ESTATE,

Plaintiff,

v.

SHIRLEY NASH WEBER, et al.,

Defendants.

No. 2:22-cv-645-KJM-KJN PS

ORDER GRANTING IFP REQUEST AND
GRANTING LEAVE TO AMEND

(ECF No. 2.)

Plaintiff, who is proceeding without counsel in this action, requests leave to proceed in forma pauperis (“IFP”).¹ (ECF No. 2.) See 28 U.S.C. § 1915 (authorizing the commencement of an action “without prepayment of fees or security” by a person who is unable to pay such fees). Plaintiff’s affidavit makes the required financial showing, and so plaintiff’s request is granted.

However, the determination that a plaintiff may proceed without payment of fees does not complete the inquiry. Under the IFP statute, the court must screen the complaint and dismiss any claims that are “frivolous or malicious,” fail to state a claim on which relief may be granted, or seek monetary relief against an immune defendant. 28 U.S.C. § 1915(e)(2). Further, the federal court has an independent duty to ensure it has subject matter jurisdiction in the case. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004).

¹ Actions where a party proceeds without counsel are referred to a magistrate judge pursuant to E.D. Cal. L.R. 302(c)(21). See 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72.

Legal Standards

i. Subject Matter Jurisdiction and Frivolity

The court must dismiss a case if, at any time, it determines that it lacks subject matter jurisdiction. Rule 12(h)(3).² A federal district court generally has original jurisdiction over a civil action when: (1) a federal question is presented in an action “arising under the Constitution, laws, or treaties of the United States” or (2) there is complete diversity of citizenship and the amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a). Further, a plaintiff must have standing to assert a claim, which requires an injury in fact caused by defendant(s) that may be redressed in court. Harrison v. Kernan, 971 F.3d 1069, 1073 (9th Cir. 2020).

Federal courts lack subject matter jurisdiction to consider claims that are “so insubstantial, implausible, foreclosed by prior decisions of this court, or otherwise completely devoid of merit as not to involve a federal controversy.” Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 89 (1998); Hagans v. Lavine, 415 U.S. 528, 537 (1974) (court lacks subject matter jurisdiction over claims that are “essentially fictitious,” “obviously frivolous” or “obviously without merit”); see also Grancare, LLC v. Thrower by & through Mills, 889 F.3d 543, 549-50 (9th Cir. 2018) (noting that the “wholly insubstantial and frivolous” standard for dismissing claims operates under Rule 12(b)(1) for lack of federal question jurisdiction). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A court may dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Id. at 327; Rule 12(h)(3).

ii. Federal Notice Pleading and a Complaint’s Failure to State a Claim

Rule 8(a) requires that a pleading be “(1) a short and plain statement of the grounds for the court’s jurisdiction . . . ; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.” Each allegation must be simple, concise, and direct. Rule 8(d)(1); see Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002) (overruled on other grounds)

² Citation to the “Rule(s)” are to the Federal Rules of Civil Procedure, unless otherwise noted.

1 (“Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus
2 litigation on the merits of a claim.”).

3 A claim may be dismissed because of the plaintiff’s “failure to state a claim upon which
4 relief can be granted.” Rule 12(b)(6). A complaint fails to state a claim if it either lacks a
5 cognizable legal theory or sufficient facts to allege a cognizable legal theory. Mollett v. Netflix,
6 Inc., 795 F.3d 1062, 1065 (9th Cir. 2015). To avoid dismissal for failure to state a claim, a
7 complaint must contain more than “naked assertions,” “labels and conclusions,” or “a formulaic
8 recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
9 555-57 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action,
10 supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678
11 (2009). Thus, a complaint “must contain sufficient factual matter, accepted as true, to state a
12 claim to relief that is plausible on its face.” Id. “A claim has facial plausibility when the plaintiff
13 pleads factual content that allows the court to draw the reasonable inference that the defendant is
14 liable for the misconduct alleged.” Id.

15 When considering whether a complaint states a claim upon which relief can be granted,
16 the court must accept the well-pled factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94
17 (2007), and construe the complaint in the light most favorable to the plaintiff, see Papasan v.
18 Allain, 478 U.S. 265, 283 (1986). The court is not, however, required to accept as true
19 “conclusory [factual] allegations that are contradicted by documents referred to in the complaint,”
20 or “legal conclusions merely because they are cast in the form of factual allegations.” Paulsen v.
21 CNF Inc., 559 F.3d 1061, 1071 (9th Cir. 2009).

22 Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 & n.7
23 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is
24 to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it
25 appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31
26 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to amend need be
27 given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

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1 **Analysis**

2 Here, plaintiff's complaint is handwritten and difficult to decipher. As best the court can
3 tell, plaintiff alleges that a number of California state employees, including the current Secretary
4 of State, have failed to return "property (USPS Money Orders) identity documents." (ECF No. 1
5 at 5.) Plaintiff checks the box for "federal question jurisdiction" and underlines the United States
6 Constitution, but provides no further legal detail about what specific claims she intends to assert,
7 much less what specific acts each of the seven defendants took regarding her documents. Aside
8 from this, the complaint appears to contain a number of wholly irrelevant statements and
9 frivolous assertions. (See Id.)

10 Here, without more factual content about the actions of each defendant in relation to her
11 documents, the court cannot determine whether plaintiff has a plausible claim against any of the
12 named defendants. Iqbal, 556 U.S. at 678. Further, many of the statements in the columns and
13 additional pages only distract from the court's analysis, and are contrary to Rule 8's requirement
14 that each allegation be "simple, concise, and direct." Rule 8(d). Finally, the court is concerned
15 that the facts, as written, may be "so insubstantial . . . as not to involve a federal controversy.
16 Steel Co., 523 U.S. at 89.

17 If plaintiff intends to raise claims under the U.S. Constitution via 42 U.S.C. Section 1983,
18 she should indicate which right was allegedly violated. Graham v. Connor, 490 U.S. 386, 393–
19 394 (1989) ("Section 1983 is not itself a source of substantive rights; rather it provides a method
20 for vindicating federal rights elsewhere conferred."); Nurre v. Whitehead, 580 F.3d 1087, 1092
21 (9th Cir. 2009) (noting that to state a claim for relief under Section 1983, a plaintiff must allege
22 that the defendant (1) acted under color of state law; and (2) caused a plaintiff to be deprived of a
23 right secured by the Constitution or laws of the United States). Further, constitutional claims
24 brought under 42 U.S.C. Section 1983 are individualized, and must focus on the specific act or
25 acts taken by the state actor. Lacey v. Maricopa Cty., 693 F.3d 896, 915 (9th Cir. 2012)
26 (reminding that an officer "causes" a constitutional deprivation when he or she (1) "does an
27 affirmative act, participates in another's affirmative acts, or omits to perform an act which he [or
28 she] is legally required to do that causes the deprivation"; or (2) "set[s] in motion a series of acts

by others which the [defendant] knows or reasonably should know would cause others to inflict the constitutional injury.”); Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988) (noting the causation inquiry “must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation”) (emphasis added).

In light of the fact that plaintiff is without counsel in this action, and because it is at least conceivable that plaintiff could allege additional facts to state a constitutional claim, the court finds it appropriate to grant plaintiff an opportunity to amend her complaint. See Lopez, 203 F.3d at 1130-31 (indicating that prior to dismissal, the court is to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it appears at all possible the defects can be corrected).

STANDARDS FOR AMENDMENT

If plaintiff elects to file an amended complaint, this new pleading shall:

- i. be captioned “First Amended Complaint”;
- ii. be limited to 10 pages, with text utilizing a font size of 12 Times New Roman or equivalent and double spacing. Plaintiff may include any communications, letters, or documents received by defendants if those documents help illustrate what actions were taken by defendants in this case;
- iii. clearly identify the actions each defendant took, alongside arguments why those actions allegedly violated the law
- iv. include a statements for jurisdiction, venue, and relief sought as is necessary;
- v. refrain from alleging redundant, immaterial, impertinent, or scandalous matters (including many of the statements included in the margins on the original complaint; and
- vi. address any other pleading deficiencies outlined above.

This amended complaint shall be filed within 28 days of this order.

Plaintiff is informed that the court cannot refer to a prior complaint or other filing in order to make plaintiff’s first amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. As a general rule, an amended complaint supersedes the original complaint, and once the first amended complaint is filed, the original complaint no longer serves any function in the case.

Finally, nothing in this order requires plaintiff to file a first amended complaint. If

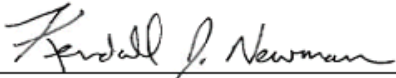
1 plaintiff determines she is unable to amend the complaint in compliance with the court's order at
2 this time, she may instead file a notice of voluntary dismissal without prejudice pursuant to
3 Federal Rule of Civil Procedure 41(a)(1)(A)(i). Such a notice should be filed within 28 days of
4 this order.

5 **ORDER**

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's motion to proceed in forma pauperis is GRANTED;
- 8 2. Within 28 days from the date of this order, plaintiff shall file either (a) an amended
9 complaint in accordance with this order, or (b) a notice of voluntary dismissal of the
10 action without prejudice; and
- 11 3. Failure to file either an amended complaint or a notice of voluntary dismissal by the
12 required deadline may result in the imposition of sanctions, including potential
13 dismissal of the action with prejudice pursuant to Federal Rule of Civil Procedure
14 41(b).

15 Dated: April 14, 2022

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17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE

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